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No. 92-190

In The

Supreme Court of the United States

October Term, 1992

UNITED STATES OF AMERICA,

Petitioner,

v.

STATE OF IDAHO, EX REL. DIRECTOR,
IDAHO DEPARTMENT OF WATER RESOURCES,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Idaho

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

The question presented is whether the McCarran Amendment, 43 U.S.C. § 666(a), waives the United States' right to plead that it is immune from complying with Idaho's general stream adjudication statute, including payment of filing fees for special services rendered by the Idaho Department of Water Resources and the judiciary to all claimants, including the United States.

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OPINIONS BELOW

Petitioner's Appendix (Pet. App.) fully sets forth the opinions below, except as noted on page 23, n. 18, *infra*.

STATUTES INVOLVED

The principal statutory provisions, 43 U.S.C. § 666 and Idaho Code § 42-1414, are fully set forth in the Petition. The Idaho water rights adjudication statute, Ch.

14, Title 42, Idaho Code, is set out in the appendix to this Brief.

STATEMENT OF THE CASE

A. The Snake River Basin Adjudication

In 1987, the Director of the Idaho Department of Water Resources (IDWR) filed the petition to commence the Snake River Basin adjudication (SRBA). The Director served notice on the United States that it was required to file with IDWR any claims to use of water from the Snake River Basin within Idaho. The United States now refuses, based upon reason of its sovereignty, to comply with Idaho's adjudication procedures requiring that claims be accompanied by the filing fees specified in Idaho Code § 42-1414.

In large part, this case arises from the unique circumstances of the SRBA. The SRBA encompasses about 87 percent of the total area of the State of Idaho, approximately 72,694 square miles.[1] Over 50 percent of the land within the Snake River Basin, approximately 36,347 square miles, is owned by the United States. Transcript ("Tr.") Vol. VI, 948.

The SRBA is the largest stream adjudication ever tried in Idaho. Tr. Vol. VI, 947. Indeed, the scope of the SRBA dwarfs that of other stream adjudications. IDWR

[1] This is an area over seven times as large as the approximately 9,304 square miles in the entire State of New Hampshire. WEBSTER'S NEW WORLD DICTIONARY at 695, 958 (2d College Ed. 1972).

received over 90,000 non-federal claims in the SRBA as of February 5, 1991, including claims from other state agencies. Tr. Vol. VI, 952. The United States has estimated that the number of its state and federal law claims will exceed 30,000,[2] thus bringing the total number of claims in the SRBA to over 120,000.

B. Development of Western General Stream Adjudications

The adjudication procedures in the SRBA have evolved from over 100 years of water rights litigation. Water is a scarce and valuable resource in the arid West. The need to transport water from distant sources to farms, cities, or other places of use, was and continues to be necessary. In order to accommodate this need, specialized forms of water rights and judicial proceedings to confirm those rights have developed in the western states.

Local courts early on began to allocate water supplies on the basis of "first in time . . . first in right." *Jennison v. Kirk*, 98 U.S. 453, 461 (1879). A water right was "acquired" by diverting the water from its natural watercourse and applying it to some "useful" or "beneficial" purpose. In times of water shortage, the right to divert the available water supply is determined by the date upon which a person perfected his water right, starting with the earliest right and proceeding chronologically down the list of rights until the water is exhausted. This

[2] Clerk's Record ("Rec.") Vol. II, 248, 253-55, 261, 272, 279, 285; Rec. Vol. III, 505.

method of water allocation is known as the prior appropriative water rights doctrine.[3]

Because of competition for the limited water supply, conflicts often arose over who had the better water right. Initially, these conflicts were settled in quiet title actions. The proof of appropriative water rights in quiet title actions, however, proved to be cumbersome. As this Court recognized in *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 819 (1976), appropriative water rights are highly interdependent. This interdependency means that to completely define a single water right, all users from a water source must be before the court. Each water right must be compared with every other water right from a water source to determine the relationship between it and the other rights. The joinder of thousands of claimants in a single quiet title case made adjudication of water rights a judicial nightmare.

Most western states responded to the problem of determining the relationship between water rights from a water source by enacting a special statutory procedure called a water rights adjudication. The purpose of this legislation was to create an efficient procedure to resolve the sharp conflicts over use of limited water resources. *See* Idaho Exhibits 243-269. The method chosen by most western states was to assign to a state engineer, or his

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[3] This doctrine was of such overriding importance to the welfare of the new states created from the public domain that many states, including Idaho, incorporated the doctrine into their constitutions. Idaho Const. art. XV, § 3.

statutory equivalent,[4] the responsibility to join or identify all persons diverting water from the water source, to prepare an analysis of the hydrology of the water source and to determine the inter-relationship between claims to the water.[5] Based upon this information, the state engineer develops a proposed list of water rights. The state

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[4] A state engineer is an executive branch officer who has specialized training regarding hydrology and administration of water rights. The Director of the Idaho Department of Water Resources is the present statutory equivalent in Idaho of the State Engineer.

[5] The theory of a river or system adjudication is to fix each appropriators [sic] rights and priorities so it will be definitely known whether he is or is not injuring another by taking his water. While it partakes of the nature of a declaratory judgment in many of its aspects, it also involves a number of local controversies which, instead of being tried as individual suits, are tried on objections to the findings of the State Engineer, all in one overarching suit. For the reason that there are involved numerous local controversies which are adjudicated by the decree and a declaratory judgment in reference to uncontested findings, thus combining not only many controversies in one suit but controverted and uncontroverted adjudications in the same suit, provision had to be made by statute. . . . The scheme was . . . to constitute the State Engineer the officer whose survey and findings would separate the contestants from the non-contestants and in that manner alone save endless effort and time which would ensue if it were done in a court room, and to make him a preliminary arbitrator of such disputes, the action of the court being on his findings when the same were contested.

Spanish Fork Westfield Irrig. Co. v. District Ct. of Salt Lake County, 104 P.2d 353, 364 (Utah 1940) *cited in* 6 WATERS AND WATER RIGHTS, § 531 at 511 (R. Clark ed., 1972), n.20.

engineer's findings, when complete, are subject to review and modification by a state court. Once the list of water rights is approved by a court, it becomes the basic document used to distribute the water rights.

Because water rights are interdependent, it is essential that all claimants be joined and bound by the court's decree. Given the large number of water rights claimed by the United States in the west, Congress recognized that the absence of the United States would effectively destroy the states' ability to adjudicate water rights. Thus, it enacted the McCarran Amendment, 43 U.S.C. § 666, to assure that the United States could not frustrate state water rights adjudications by asserting its sovereign immunity.

C. Idaho Adjudication Procedures

In Idaho, IDWR petitions the district court for an order commencing the adjudication.[6] Idaho Code § 42-1406A. Idaho Code § 42-1408A requires IDWR to serve notice of the order commencing the adjudication (1) on the United States, (2) on the State of Idaho, and (3) on each person listed on the real property assessment rolls. IDWR served about 450,000 first round notices in the SRBA. Tr. Vol. VI, 952.

[6] This explains why IDWR and its director, Keith Higginson, are identified as "petitioner" in the case caption. IDWR holds no water rights and therefore is not a claimant in an adjudication. Thus, IDWR is not a "plaintiff" but, rather, acts as a fact finder for the court. *See* discussion at pages 10-11, *infra*.

Persons claiming water rights are required to forward their claim, on a specified form, to the IDWR. The claims must be accompanied by a filing fee.

The role of the IDWR is to facilitate the adjudication by providing assistance to claimants in the filing of their claims, by reviewing the claims and by preparing a report on all claims.[7] In order to assist claimants in filing claims, the IDWR makes extensive information available to claimants, including specially prepared hydrologic studies, computer modelling and orthophotoquad maps. Tr. Vol. IV, 610; Idaho Code § 42-1410(4). Other resources made available to the court and all claimants include IDWR's database of water right records. Tr. Vol. VI, 1059.

Upon receipt of the claims, IDWR investigates the claims. The investigation involves a number of stages. Initially, a determination is made whether the claims conform with existing IDWR water right records such as decrees or licenses. If IDWR's comparison of a claim with its records discloses discrepancies, then a further review of in-house materials such as maps and aerial photographs is undertaken. A field investigation may be required to resolve any discrepancies such as a determination of diversion rates. Tr. Vol. VI, 971-972, 979-981. Finally, this factual review may disclose a need for review

[7] It is essential that claims be complete and correct. Tr. Vol. VI, 955. As a consequence, IDWR provided extensive assistance to all claimants. This assistance ranged from a person asking IDWR to prepare their claim for them to the other extreme of merely receiving the claim and filing fee through the mail with no contact. Tr. Vol. VI, 954. In the latter case, over seventy-five per cent of the claims had to be returned because of faulty or incomplete information. Tr. Vol. VI, 954-955.

by technical personnel, legal counsel or by policy makers. Tr. Vol. VI, 981-982.

IDWR collects and investigates the claims based upon state law, and presents its recommendations to the district court, along with abstracts of the claims based upon federal law, in the form of a report. Idaho Code §§ 42-1409; 1410; and 1411. The recommendation includes the director's findings regarding each water right claimed and a listing of how each water right relates to other rights contained in the report.

If no objection is received to IDWR's recommendations, then the claims as recommended are decreed without further proof. Idaho Code § 42-1412(9). If an objection is filed to a recommendation, then the claim is submitted to the court and a hearing on the objection is held by the district court. Idaho Code § 42-1412. Claimants bear the burden of proving their claims to water if an objection is filed, and often are in an adversary posture among themselves. *See, Nevada v. United States*, 463 U.S. 110, 139-140 (1983). After all objections are resolved by the court, a decree is entered that lists the rights to the water source and is used to distribute the water supply. Idaho Code § 42-1413.

D. The Nature of Idaho's Filing Fees

Idaho law requires that each claim of a water right be accompanied by a filing fee. The amount of the filing fee varies with the nature of the water right and the amount

of water claimed.[8] The enormous scope of the SRBA has led to substantial filing fees for many of the larger claimants. For example, the Idaho Power Company has paid $4,653,671 in filing fees as of October 23, 1989. Rec. Vol. I, 190. Agencies of the State of Idaho have paid fees of about $3.3 million.[9] Tr. Vol. VI, 1059. Although the ultimate amount the United States will pay is yet to be determined, the fact that it owns over fifty percent of the land area within the adjudication ensures that the United States will have a vast number of claims, and accordingly the total fees paid by the United States will be substantial.

Once received, the filing fees are placed in a dedicated Adjudication Account. Monies in the account are appropriated annually by the Idaho Legislature to pay for

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[8] The United States misrepresents the fees required by Idaho Code § 42-1414 when it states that "the variable filing fees fall more heavily upon sovereign claimants, such as the United States and Indian Tribes that are entitled to file notice of claims to instream flows." Petition at 8. The implication is that Idaho skewed the fee schedule to apply more heavily on the United States. This implication is unwarranted. First, the record indicates that the largest single category of claims for the United States will be for stock watering and domestic use, *see*, citations, n.9, *supra*, for which no variable fee is imposed. Second, the statement is misleading because it fails to acknowledge that the claims made by State of Idaho executive agencies include instream flow claims to which the variable fee applies. Tr. Vol. IV, 591.

[9] These filing fees by state agencies do not come out of the Adjudication Account. Tr. Vol. VI, 1060. These fees, as well as any other expenses of the agency, are paid from the general fund account or other dedicated fund accounts and not the adjudication account.

the extensive services provided by IDWR and the judiciary to the claimants, as described in section C *supra*. Idaho Code §§ 42-1414(3) and 42-1777. An expense is charged to the Adjudication Account if the activity "is necessary . . . to carry out the director's duties under the adjudication statute." Tr. Vol. VI, 1005.

The filing fees in the SRBA are not used to pay adversarial "litigation" costs of the State.[10] The district court undertook an extensive examination of the expenditures funded by the filing fees in a three day trial to determine if the filing fees are essentially an alternate method of assessing a judgment for costs. After reviewing the director's statutory duties and the evidence presented at trial, the district court reasoned:

> In so far as the activities of the Director and any expenditures of the Director and any expenditures made on behalf of those activities are reasonably and rationally related to his duties under the adjudication statutes, he is neither an adversary nor an adversarial party. In performing his duties leading to the issuance and filing of the Director's reports, he acts in a quasi-judicial capacity. When the Director proceeds outside his quasi-judicial statutory capacity, and becomes a party opponent in this litigation matter,

[10] The United States throughout its Petition asserts that the filing fees pay the "State's" costs. It raises a misperception by doing so. The filing fees are used only to pay for the special services provided by the Idaho judiciary and Department of Water Resources to the claimants in this adjudication, pursuant to statutory mandate.

> costs associated with such efforts become a general revenue obligation of the state.[11]

Pet. App. at 107a-108a.

The Idaho Supreme Court likewise rejected the United States' characterization of IDWR's role under Idaho law in this adjudication as that of an ordinary party litigant:

> A general water adjudication brought by the state is analogous to an interpleader action. . . . The position of the director of the Department of Water Resources is analogous to the "stakeholder" in an interpleader action. The director is really a disinterested party. The only interest the director has is to see that all rights are accurately adjudicated.

Pet. App. at 15a-16a (citation omitted). As a "disinterested" party in the SRBA, IDWR will in no sense "prevail" when the adjudication is completed.

REASONS FOR DENYING THE PETITION

SUMMARY OF ARGUMENT

1. There is no dispute in this case regarding the Court's standards for construing waivers of sovereign

[11] The district court made this statement in the context of the issue of whether the filing fees are disguised taxes, yet the determinations made therein are fully applicable to the issue of whether the filing fees constitute a judgment for costs. A general revenue obligation would not be paid from the filing fees placed in the adjudication account.

immunity. The Idaho Supreme Court appropriately followed those standards. The dispute hinges on the United States' disagreement with the Idaho Supreme Court's determination that the language of the McCarran Amendment plainly and unambiguously waives the sovereign immunity of the United States from compliance with state adjudication statutes, including filing fee requirements.

2. The Idaho Supreme Court's decision is consistent with the other decisions by this Court construing the McCarran Amendment as waiving the United States' right to plead that it is not amenable to state laws regarding general stream adjudications. The decision is also consistent with the two other reported decisions construing the McCarran Amendment to require the United States to pay state filing fees. Further, during the forty years since the enactment of the McCarran Amendment the United States has consistently paid filing fees in adjudications around the West. The only reason for this appeal is the size and nature of the present adjudication. This is no basis for review by the Court.

ARGUMENT

1. When construing waivers of sovereign immunity, the Idaho Supreme Court correctly observed:

> The waiver of immunity must be expressed in the statutory text in question and not from extraneous sources. *United States v. Nordic Village, Inc.*, 1992 Slip Op. 90-1629; *Dellmuth v. Muth*, 491 U.S. 223, 228-229, 109 S. Ct. 2397, ___ (1989); *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 105 S. Ct. 3142 (1985).

Pet. App. at 7a. The Idaho Supreme Court further noted that:

> The extent of the waiver is not to be extended beyond the "clear and unambiguous" language of the statute. *Hancock v. Train*, 426 U.S. 167, 179, 96 S. Ct. 2006, 2013 (1976).

Pet. App. at 7a. Applying these rules explicitly to the McCarran Amendment, and after examining possible alternative constructions of the language as suggested in *United States v. Nordic Village, Inc.*, 112 S. Ct. 1011, 1016 (1992), the Idaho Supreme Court concluded:

> No hypothetical, no alternate construction technique, can limit or alter the clear waiver of immunity of 43 U.S.C. § 666(a), nor cause "costs" to mean "filing fees."

Pet. App. at 12a-13a.

The United States cites numerous cases of the Court for the proposition that waivers of sovereign immunity must be unequivocal and not be enlarged beyond what the language requires, as if the mere citation to those cases renders the language of the McCarran Amendment unclear and the Idaho Supreme Court's decision wrong. Petition at 12-14. In fact, it is the United States that uses an analytic approach that is inconsistent with numerous rulings of this Court.

As the Court has stated, "the 'unequivocal expression' of elimination of sovereign immunity that we insist upon is *an expression in statutory text.*" *Nordic Village*, 112 S. Ct. at 1016 (emphasis added). The United States cites *United States Dep't of Energy v. Ohio*, 112 S. Ct. 1627 (1992), regarding the Resource Conservation and Recovery Act

and Clean Water Act, and *Nordic Village*, regarding the Bankruptcy Code, to show that the Idaho Supreme Court's decision is wrong. Rather than have the Court carefully examine the McCarran Amendment itself, the United States would have the Court find ambiguity based upon decisions regarding unrelated statutes.

The correct approach is to examine the language of the McCarran Amendment and determine the scope of the waiver explicitly and unambiguously contained in that language. The Idaho Supreme Court correctly found:

> The United States Supreme Court in *Nordic Village* found sections 106(a) and (b) of the Bankruptcy Code to *clearly express* a waiver of immunity by the United States as to "monetary liability." The language of 43 U.S.C. § 666(a), just as plainly as the Bankruptcy Code did in 106(a) and (b), express [sic] a "clear intent" of congress to subject the United States to all of the state court processes of an "adjudication" of its water rights with the sole exception of costs.

Pet. App. at 12a (emphasis in original). Congress' waiver of federal immunity is plainly and unambiguously apparent on the face of the McCarran Amendment.

The first sentence of the Amendment contains two separate waivers: consent to join the United States in suits for the adjudication of water rights, clause (1), and consent to join the United States in suits for the administration of water rights, clause (2).[12]

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[12] Clause (2) also makes reference to certain types of federal water rights: "water rights by appropriation under State law, by purchase, by exchange, or otherwise."

The United States argues that the Idaho Supreme Court mistakenly construed the joinder language in the first sentence as the complete federal waiver of immunity. Petition at 15. An accurate reading of the Idaho Supreme Court's opinion reveals that it was making a simple point; that Congress realized that merely consenting to joinder of the United States in an adjudication "suit" did not go far enough. Pet. App. at 11a. Such suits are highly specialized lawsuits which have very specialized procedures. As the Court has said:

> [W]ater rights adjudication is a virtually unique type of proceeding, and the McCarran Amendment is a virtually unique federal statute, and we cannot in this context be guided by general propositions.

Arizona v. San Carlos Apache Tribe, 463 U.S. 545, 571 (1983). Further consent was needed from Congress, beyond simply joining the United States in such suits, to require the United States to comply with these special adjudication requirements. *See, e.g., Blatchford v. Native Village of Noatak*, 111 S. Ct. 2578, at 2585 n.4 (1991) (grant of federal question jurisdiction not sufficient to abrogate immunity for all federal questions). Thus, the Idaho Supreme Court recognized that the first sentence of the McCarran Amendment, allowing joinder of the United States in "any suit . . . for the adjudication of [water] rights," must be read together with the second sentence, which provides that "when a party to any such suit, [the United States] shall . . . be deemed to have waived *any* right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty." 43 U.S.C. § 666(a) (emphasis added). This

second sentence contains the critical waiver of sovereign immunity.

In *Hancock v. Train*, 426 U.S. 167 (1976), the Court noted the waiver in the Clean Air Act lacked all-inclusive language requiring federal installations to "comply with *all* . . . state . . . requirements," 426 U.S. at 182 (emphasis in original). In contrast, the second sentence of the McCarran Amendment does provide all-inclusive language by waiving "any" right to plead sovereign immunity from state laws governing adjudication procedures.[13]

The United States attempts to evade the all-inclusive waiver in the McCarran Amendment by arguing that the Amendment cannot plausibly waive immunity to the "unconventional" filing fees which "Idaho has only recently begun to impose." Pet. for Cert. at 15-16. The United States is only rearguing issues previously rejected by the Court. In *United States v. District Ct. for Water Div. No. 5*, 401 U.S. 527 (1971), upholding Colorado's adjudication statute, the Court rejected the following argument, very much like the one offered by the United States in the present case:

> It is emphasized, however, [by the United States] that the procedures under the new Act are much more burdensome on the Government

[13] The United States argues that the Idaho Supreme Court erred by finding the second sentence to be "a waiver of immunity to application of *all* state laws." Petition at 16 (emphasis added). The Idaho Supreme Court did *not* construe that phrase as a waiver of immunity from *all* state laws. The Idaho Supreme Court, in fact, rightly rejected that construction as implausible, along with the other alternate constructions proffered by the United States. Pet. App. at 11a-12a.

> than they were under the older Act. It is pointed out that the new statute contemplates monthly proceedings before a water referee on water rights applications. These proceedings it is argued, do not constitute general adjudications. . . .

Id., at 529. The Court, thus, affirmed that the McCarran Amendment does not preclude states from amending their adjudication procedures to meet changing circumstances and needs. As modern adjudications within Idaho grew more complex, and burdens upon individual claimants increased, it became apparent that the Idaho judiciary and IDWR would have to provide additional services to all claimants, including the United States to ensure efficient and timely resolution of adjudications. Accordingly, Idaho amended its adjudication procedures to assess filing fees that would allow provision of services designed to fulfill such needs. Such amendment of adjudication procedures is well within the scope of the McCarran Amendment.

The United States also argues that placement of the definite article "the" before "State laws" in the second sentence indicates that the waiver is limited to state laws governing acquisition of water rights by appropriation, as mentioned in the second clause of the first sentence.[14]

[14] The United States, in its Petition, changes the first sentence from the singular "appropriation under state law" to the plural when it rephrases it to: "the state laws governing 'acqui[sition of] water rights by appropriation.' " Petition at 16 (emphasis added). The obvious purpose of this rephrasing is to make the construction of the first sentence parallel "the state laws" used in the second sentence.

Petition at 16. Under this reading of the McCarran Amendment, the waiver in the second sentence only prevents the United States from pleading "sovereign immunity to excuse its failure to follow state law requirements in *acquiring water rights*, where the water rights are derived from state law rather than a federal reservation." Petition at 17 (emphasis in original). The United States insists that immunity to other state laws governing adjudication procedures must be separately stated. *Id.* Under this proposed interpretation, there is no waiver of immunity to suits for adjudication, only the bare consent to joinder found in clause 1 of the first sentence.

The United States' proposed interpretation of the McCarran Amendment would unduly restrict the Amendment, requiring Congress to separately waive immunity to each aspect of state adjudication laws. Fortunately, the Court has rejected the United States' argument in prior cases. The Court has consistently characterized the waiver in the McCarran Amendment as "all-inclusive." *United States v. District Ct. for Eagle County*, 401 U.S 520, 523 (1971); *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 810 (1976). Accordingly, in *United States v. District Ct. for Water Div. No. 5*, 401 U.S. 527 (1971), the Court found that the McCarran Amendment waived the United States' immunity to Colorado's new, and allegedly more burdensome, adjudication procedures. *Id.* at 529. Notably, the Court did not require that a separate waiver be obtained before such new procedures were applied to the United States.

In addition to its inconsistency with established precedent, the United States' proposed interpretation of the

McCarran Amendment is implausible. Use of the definite article "the" indicates that the term "state laws" refers to a particular set of laws, but does not necessarily imply the existence of an antecedent. The most logical reading of the second sentence is that the United States is to comply with the adjudication laws of the particular state bringing the general stream adjudication. The United States' arbitrary search for an antecedent in the first sentence violates common sense rules of construction, and, more importantly, violates the policy of compliance with adjudication procedures underlying the McCarran Amendment.[15]

The United States' proposed interpretation of the McCarran Amendment is nothing but a thinly-disguised recycling of arguments previously rejected by the Court. The Idaho Supreme Court correctly applied Court precedents in rejecting such implausible constructions of the McCarran Amendment.

The single exception to the general waiver of sovereign immunity in the McCarran Amendment forms the

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[15] The United States' interpretation of the McCarran Amendment also fails to make sense. Under the United States' interpretation, the waiver in the second sentence would only waive the United States' "immunity to excuse its failure to follow state law requirements in acquiring water rights. . . . " Pet. at 17. Such a waiver is unnecessary, since the United States could not acquire a water right based upon state law without following state law requirements. Secondly, if the United States voluntarily acquires a right under state law, it would have no reason to later claim immunity from that same state law in an adjudication.

heart of the United States' final argument. It states: "Provided, That no judgment for costs shall be entered against the United States in any suit." 43 U.S.C. § 666(a). The United States argues that the Idaho Supreme Court erred when it found that the plain meaning of "judgment for cost" is different from the "filing fees" required by Idaho Code § 42-1414. The United States urges that the only difference is the manner in which they are imposed, and they are actually the same assessments. Petition at 17. The United States is wrong both legally and factually.

The Idaho Supreme Court correctly determined the meaning of the term "judgment for costs" in accordance with its plain and well-defined meaning:

> It has long been recognized that "costs" is a term of known legal significance and differs from "fees." . . . "Costs" are a pecuniary allowance or a reimbursement made to the prevailing party in a lawsuit and are recoverable from the losing party. . . . In its usual and ordinary context, a fee is a charge for a privilege or a service under the control of the government.

Pet. App. at 13a-14a (citations omitted). The distinction between the plain meaning of the terms "costs" and "fees" described by the Idaho Supreme Court is correct and well recognized. 10 WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE, § 2666 (1983) ("Costs, Fees, and Expenses Distinguished"), *cited in Library of Congress v. Shaw*, 478 U.S. 310, 321 (1986). The Court has recognized that "judgments for costs" have a very specific meaning: to reimburse a prevailing party the

costs of their litigation. *See, e.g., Ex Parte Peterson*, 253 U.S. 300, 314-319 (1920).[16]

Given the plain meaning of "judgment for costs," the filing fees required by Idaho Code § 42-1414 do not fall within this exception to the McCarran Amendment waiver. The filing fees do not involve the entry of a

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[16] The adjudication statutes in existence in 1952 distinguished between fees and costs. Filing fees were a substantial source of adjudication funding for some states. The United States implies that at the time of passage of the McCarran Amendment, other western states, including Senator McCarran's home state of Nevada, only funded their adjudications with judgments for cost. Petition at 6, n.1. This statement is a mischaracterization of the facts, and simply ignores that most state statutes at the time of enactment of the McCarran Amendment included provisions for either filing fees or apportionment of expenses, or both, as funding mechanisms for general adjudications. In fact, several states in 1952 provided for graduated filing fees analagous to the fees contested in this case. *See, e.g.*, Nevada Compiled Laws § 7914 (1929) (Idaho Exh. 252); Arizona Code of 1939 § 75-137 (Idaho Exh. 243); Act of March 6, 1947, ch. 88, § 2, 1947 Or. Laws 99, 100 (Amending Oregon Compiled Laws Annotated § 116-807) (Idaho Exh. 262).

The United States mischaracterizes the Arizona, Nevada and Oregon filing fees when it states that they were not judicial water rights proceedings. Petition at 18, n.10. Adjudications in those states started with significant quasi-judicial administrative investigations which narrowed the issues before the adjudication was finalized by judicial proceedings. Arizona Code of 1939 §§ 75-114 -127 (Idaho Exh. 243); Nevada Compiled Laws §§ 7905-7929 (1929; 1942 Supp.) (Idaho Exhs. 252, 253); Oregon Compiled Laws Annotated §§ 116-801 through 823 (1940) as amended by Act of March 6, 1947, ch. 88, § 2, 1947 Or. Laws 99, 100 (Idaho Exhs. 261, 262). The only distinction, which is not a significant difference, is that the judiciary did not take jurisdiction until after the administrative activities.

decree or order, but must accompany the initial filing of a notice of claim. Idaho Code § 42-1414. The fees bear no resemblance to a judgment for costs, since they are paid by all parties regardless of whether they "prevail" or not. Further, the fees are not used to reimburse claimants, but rather to fund the general services provided by IDWR to the benefit of all claimants, including the United States.

A lawsuit with over 120,000 claims involves a great logistical undertaking that far surpasses the administrative capability of most litigants. The IDWR's role reduces this administrative burden on all litigants, including the United States. The parties, including the United States, do not have to concern themselves with service of process on other potential claimants. They do not have to take and assemble the claims in a uniform format. They do not have to independently review the accuracy of each claim.[17] This is already done for them by IDWR, which has gathered the claims, examined the water system, investigated the claims based upon state law, abstracted the federal claims, and made its recommendations regarding how the claims are inter-related. Claimants, as a result, can focus their resources on those claims of critical importance to their individual situation. The practical consequence of IDWR's assistance in the SRBA is to make the SRBA a much simpler adjudicatory proceeding for all claimants, including the United States.

The benefit of the services provided to claimants from filing fee revenues cannot be reasonably questioned.

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[17] Of course, a claimant may review very closely a competing claim to water of another party. But this review would not extend to all claims.

The district court, after reviewing the factual evidence, concluded:

> The filing fee is a reasonable charge assessable upon an "identifiable recipient[18] for a measurable unit or amount of government service or property from which he derives special benefit." *Federal Power Commission v. New England Power Company* 415 U.S. 345, 349, 94 S. Ct. 1151, 1154 (1974). The ultimate beneficiary, the United States, is well served by having its water rights administered and adjudicated.

Pet. App. at 111a-112a.

The district court's conclusion is in accordance with Supreme Court precedents holding that graduated fees can be legitimately charged to claimants in general adjudications to pay for the same types of services provided by the Idaho Department of Water Resources in this case. "That these services are beneficial to the claimant and necessary to the preservation of his rights in the stream and the protection and assurance of his title goes without saying." *Pacific Live Stock Co. v. Lewis*, 241 U.S. 440, 452, (1916), quoting *Pacific Livestock Co. v. Cochran*, 144 Pac. 668, 672 (Ore. 1914).

2. The issue in this case is limited to whether the plain language of the McCarran Amendment allows states to impose filing fees on the United States in general adjudications to pay for the special services provided by states in those adjudications. Despite the United States' participation in numerous water rights adjudications

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[18] Petitioner's Appendix at 111a mistakenly reprinted this word as "receipt."

requiring some type of filing fee, litigation challenging such fees has been extremely limited. The consistent practice of the United States has been to defer to state filing fee requirements. The United States has paid filing fees in general adjudications in the states of Arizona, California, Colorado, Idaho, Montana, Nevada, and Oregon.[19] Rec. Vol. I, 57-58, 92-106, 150-153, 158-160, 195.[20] In some cases, the fees amounted to several hundred thousand dollars.[21]

The United States has rarely chosen to challenge the imposition of adjudication filing fees. In fact, Idaho is only aware of two reported decisions construing whether the Amendment allows the imposition of fees against the United States. *United States v. Oregon Water Resources*

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[19] The United States has paid some of these fees under protest. Idaho Exh. 193.

[20] Congress recognizes that the acquisition of water rights by the United States, including their proof in court, requires funding. Congress has authorized that funding. For example, 16 U.S.C. § 1d (1988), provides that "[o]n and after August 8, 1953 applicable appropriations of the National Park Service shall be available for the objects and purposes specified in section 17j-2 of this title." Section 17j-2 of Title 16, U.S. Code, authorizes appropriations for the investigation, establishment, and acquisition of water rights in accordance with "local custom, law, and decision of courts. . . . "

A similar provision applies to the U.S. Forest Service. 16 U.S.C. § 526 (1988). The Reclamation Act of 1902, ch. 1093, 32 Stat. 388, also requires compliance with state water law for Bureau of Reclamation projects. Idaho argued in the courts below that these statutes provide an independent basis for payment of the filing fees.

[21] The total fees paid by the United States in Arizona adjudications is approximately $320,000. Rec. Vol. III, 610.

Dep't, 774 F. Supp. 1568 (D. Ore. 1991) (United States must pay filing fees); and *In re the General Adjudication of all Rights to Use Water on the Big Horn River Sys.*, 753 P.2d 76 (Wyo. 1988), *aff'd by an equally divided court*, 492 U.S. 406 (1989) (United States must pay its share of fees of special master). In both cases, the decisions were consistent with the Idaho Supreme Court decision.

In another case, rather than appeal a Colorado district court's decision requiring the United States to pay fees, the United States agreed to pay the filing fees. *United States v. City & County of Denver*, 656 P.2d 1, 15 & 20-21 n.33 (Colo. 1983).[22]

The United States' routine payment of filing fees in other adjudications belies the United States' assertion that assessment of such fees is an important and reoccurring issue of federal sovereignty. Indeed, past payment of fees indicates that the United States has acted in accordance with the very interpretation of the McCarran Amendment that it now challenges. The United States' past actions indicate that the actual purpose of the United States' petition is to seek a judicial amendment of the McCarran Amendment. Concerns about the need to amend the McCarran Amendment are more properly addressed in Congress, however, and should not be brought before this Court.

Indeed, the only reason for the United States to raise the issue at this late date is because the SRBA will involve approximately 30,000 federal claims, resulting in larger

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[22] The lower court's decision can be reviewed in the record. Rec. Vol. I, 31-33.

fees than in past adjudications. Although the dollar amount at issue in this case appears substantial, the issue of adjudication filing fees has not been of great concern to the United States in the past. Nor does the issue of adjudication filing fees raise concerns regarding federal-state relations in general. Due to the limited application of the McCarran Amendment, and the unique size and scope of the federal claims in this case, the issues raised by the United States regarding filing fees are unlikely to arise in future cases. The mere fact that the unique circumstances of this case will result in cumulative filing fees more substantial than in past cases does not elevate this issue to a level requiring Supreme Court review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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IDAHO CODE, CHAPTER 14
ADJUDICATION OF WATER RIGHTS

SECTION.

42-1401. Legislative intent.
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42-1419.	Entry of an order commencing a general adjudication on a special docket – Constructive notice – Filing of certified copy of order in other counties.
42-1420.	Binding effect of decree – Exceptions.
42-1421.	Procedures for adjudication of unperfected water rights initiated under state law – Director's jurisdiction.
42-1422.	Special master – Appointment – Powers and duties – Compensation – Disqualification – Review of special master's report.
42-1423.	Severability.

42-1401. Legislative intent. – The legislature finds and declares that the state laws and procedures for the adjudication of rights to the use of water need to be modified:

(1) to provide a statutory procedure for incorporating a negotiated agreement between a federal reserved water right claimant and the state of Idaho into an adjudication;

(2) to provide a more efficient method for adjudications;

(3) to assure that state laws and procedures provide a fair and impartial forum for the adjudication of the rights of all claimants; and

(4) to assure that state laws and procedures are adequate as a matter of federal law to adjudicate the water rights of all federal reserved water right claimants. [I.C., § 42-1401, as added by 1986, ch. 220, § 2, p. 558.]

42-1401A. Definitions. – The following terms are defined for purposes of this chapter as follows:

(1) "Claimant" means any person asserting ownership of rights to the use of water within the state of Idaho or on whose behalf ownership of rights to the use of water is asserted.

(2) "Consumptive use" means the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purposes of maintaining water quality is required before the water may be returned to the water system. "Consumptive use" for an irrigation water right shall be based upon the most water consumptive crop that can be grown in the area during the period of the year when water is used for irrigation. "Consumptive use" is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code.

(3) "Department" means the Idaho department of water resources.

(4) "Director" means the director of the Idaho department of water resources.

(5) "Domestic use" is defined in section 42-111, Idaho Code.

(6) "General adjudication" means an action for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho that binds all persons, including

unknown parties, except as provided in section 42-1420, Idaho Code.

(7) "Party" means the director, any person who is a claimant, or any person who is served or joined.

(8) "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the state of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or private entity.

(9) "Private adjudication" means an action commenced in accordance with section 42-1404, Idaho Code, for the judicial determination of the extent and priority of the rights of named parties to the use of water from any water system within the state of Idaho, for which a general adjudication has not been commenced or completed, that binds only those persons joined as parties.

(10) "Purchaser" means any successor in interest of a claimant, whether the interest is acquired by purchase, gift, inheritance, or other means.

(11) "Supplemental adjudication" means an action commenced in accordance with section 42-1405, Idaho Code, for the judicial determination of the extent and priority of the rights of the plaintiff(s) to the use of water from any water system within the state of Idaho which has been adjudicated in a general adjudication or in a private adjudication.

(12) "Stock watering use" means the use of water solely for livestock or wildlife where the total use is not in excess of thirteen thousand (13,000) gallons per day.

(13) "Water system" includes all rivers, streams, lakes, springs, ground waters, or other sources within this state, including all water subject to claims based

upon federal law, including any river system or other source, as used in 43 U.S.C. section 666. [I.C., § 42-1401A, as added by 1986, ch. 220, § 3, p. 558 and ch. 234, § 1, p. 645; am. 1990, ch. 319, § 6, p. 870.]

42-1402. Decreed rights appurtenant to land – Federal reserved water rights excepted. – In allotting the waters of any water system by the district court according to the rights and priorities of those using such waters, such allotment shall be made to the use to which such water is beneficially applied, except where federal reserved water rights are involved, in which case the allotment shall be made in accordance with federal law. The right confirmed by such decree or allotment shall be appurtenant to and shall become a part of the land on which the water is used, and such right will pass with the conveyance of such land, and such decree shall describe the land to which such water shall become so appurtenant, except in the case of a federal reserved water right. The amount of water so allotted shall never be in excess of the amount actually used for beneficial purposes for which such right is claimed, or in the case of a federal reserved water right, in excess of the amount determined by federal law. [1903, p. 223, § 38; reen. R.C., § 4621; am. 1913, ch. 35, § 1, p. 133; C.L., § 4621; C.S., § 7033; I.C.A., § 41-1302; am. 1969, ch. 279, § 2, p. 822; am. 1986, ch. 220, § 4, p. 558.]

ANALYSIS

42-1403. Certified copies of allotments. – It shall be the duty of the clerk of the district court in each of the counties of this state to prepare at the expense of the

county, and transmit without delay to the department of water resources by express or registered mail, a certified copy of the allotments of the various streams, made by the district court and now on file in the offices of the district court in the various counties of the state: provided, that said clerk may, in place of such transcript, transmit such original records of such decrees as are recorded in books kept for that purpose. Immediately upon receipt of said transcripts or said original records, it shall be the duty of the department to record them in a book kept for that purpose, and to classify and arrange said decrees by placing all the rights to water of one stream and its tributaries together, and the department shall send to each water commissioner a certified copy of the allotments made by the district court of all the streams within his district. And when an allotment of the waters of a stream shall be made by the district court, the clerk of such district court shall immediately prepare, at the expense of the county, and transmit to the department of water resources, a certified copy of the decree allotting such waters. [1903, p. 223, § 39; reen. R.C. & C.L., § 4622; C.S., § 7034; I.C.A., § 41-1303.]

42-1404. Private actions for adjudication of water rights. – (1) Any claimant may file suit in the district court for the county in which the point of diversion or place of use of the claimed right is located for the purpose of adjudicating rights to the use of water from any water system for which a general adjudication has not been commenced or completed. The claimant shall name as defendants the director and all claimants of rights to the use of water from the water system whose joinder is necessary to resolve the dispute over rights to the use of

water from the water system. The claimant shall also publish notice of the action in the manner specified in subsection (2)(b) of section 42-1408A, Idaho Code.

(2) If the director determines that the public interest and necessity will be served by a general adjudication of water rights, the director may submit a counterclaim in the form of a petition to the court for an order commencing a general adjudication and the adjudication shall proceed in the manner specified in sections 42-1406 and 42-1407 through 42-1423, Idaho Code.

(3) If the director determines that the public interest and necessity will not be served by a general adjudication of water rights, the action may proceed as described in subsections (4) through (7) of this section as an adjudication of the rights of all persons joined pursuant to subsection (1) of this section.

(4) Any claimant of a right to the use of water from the water system shall be entitled to intervene and have his or her right adjudicated. The court may request a report of the director, as described in section 42-1411, Idaho Code, as to those rights to be determined, in which case the director shall commence an examination of the water system in accordance with the provisions of section 42-1410, Idaho Code.

(5) The director shall provide to the court an estimate of the costs that will be incurred in conducting the examination and in preparing the report and an approximate time when the report will be completed. The court shall order the claimants of the rights to be determined to submit a notice of claim to the director in accordance with section 42-1409, Idaho Code, except that the fee as described in section 42-1414, Idaho Code, shall not apply.

Upon the completion of claims-taking, the director shall bill each claimant for a claim fee equal to that claimant's proportionate share of the total estimated cost to the state relative to that claimant's share of the total amount of water claimed by all claimants or for an amount as determined by the court. Any notice of claim for a water right for which the fee is unpaid after thirty (30) days from billing by the director shall be incomplete and may be rejected by the director. Prior to filing of the report with the court, the claimants shall pay the balance of the department's verified costs or be refunded any unused estimated costs advanced to the department in the same proportion as described above. In the event that a claimant shall contest the department's costs, the court shall then determine the reasonable costs to be paid by each claimant.

(6) Notice of the filing of the report shall be given and objections to the report shall be made and heard as provided in sections 42-1411 and 42-1412, Idaho Code. The adjudication shall otherwise proceed in accordance with the Idaho rules of civil procedure. The decree shall contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable. The decree shall also determine all other matters necessary for the efficient administration of the water rights. The decree shall be conclusive as to the rights determined in the proceeding only as to those persons party to the proceeding.

(7) Any party aggrieved by the decree of the district court may appeal in accordance with the Idaho appellate rules. [I.C., § 42-1404, as added by 1986, ch. 220, § 5, p. 558.]

42-1405. Summary supplemental adjudication of water rights. – (1) Where an adjudication of a water system has been commenced prior to July 1, 1986, or where an adjudication of a water system has been commenced pursuant to subsection (3) of section 42-1404, Idaho Code, resulting in a decree of any court of competent jurisdiction, and thereafter it appears that any claimant having the right to the use of any part of those waters was not included in the decree as a party, and the right was not determined thereby, or that a claimant subsequent to the decree has acquired any right to the use of those waters, the claimant may bring an action to have such right adjudicated in the manner specified in subsection (3) of this section.

(2) Where a general adjudication of a water system has been commenced or enlarged after July 1, 1986, pursuant to sections 42-1406 or 42-1406A, Idaho Code, resulting in a decree of any court of competent jurisdiction, and thereafter, it appears that a claimant subsequent to the decree has acquired any right to the use of those waters, or that a claimant who possesses a water right designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code, did not have those water rights determined, the claimant may bring an action to have those water rights adjudicated in the manner specified in subsection (3) of this section.

(3) The following procedure shall be used for any supplemental adjudication:

(a) Claimant may bring an action in the district court of the county wherein the point of diversion or place of use of the claimed right is located against the watermaster having charge of the distribution of the water source in which the claimant asserts an interest, or if there be no

watermaster thereof, then against the director, provided that if the action is brought against the watermaster notice thereof shall be mailed by certified mail by the filing party to the director, at the time of service upon the watermaster; and

(b) The claimant shall, in his complaint, set forth his acceptance as binding upon him of all prior applicable decrees and the findings of fact and conclusions of law upon which they are based, shall request the commencement of a supplemental adjudication and shall set forth the claimed water right in a notice of claim form furnished by the director and attached to the complaint. Thereupon, the district court shall issue a summons [cause] and it shall be served upon the defendant; and

(c) After return of service of summons, the claimant shall cause to be published once a week for not less than three (3) weeks, a notice of the pendency and purpose of the action in such newspaper or newspapers as the judge of the district court may order, which notice shall contain the title of the court and the cause, the name and post-office address of the plaintiff, the date of priority of the water right claimed, the source of the water supply, the amount of water claimed, in general the nature of the water use, the approximate location of the point of diversion, and the place of use; and

(d) Any person who may be injured and who objects to the water right claimed by the plaintiff, as described in the published notice, shall, within forty-five (45) days of the date of the first publication of notice, file with the district court written notice of such objection stating the reasons for the objection. A copy of the objection shall be served upon the plaintiff, the watermasters, the director and upon all other parties of record in the action; and

(e) The director, within thirty (30) days after the expiration of the time fixed to file an objection with the court, shall file with the court notification as to whether the director will conduct an examination of the water rights

claimed in the complaint and whether the director [department] will prepare for submittal to the court a report as described in section 42-1411, Idaho Code, as applicable. The director may commence an examination of the water system in accordance with the provisions of section 42-1410, Idaho Code. Notification to the court that a report will be prepared shall include an approximation of the time when the report will be completed, and an estimate of the director's costs that will be incurred in conducting the examination and in preparing the report. Plaintiff shall then be required to advance to the director, the estimated costs to be incurred by the director in conducting the examination and in preparing the report. Prior to the filing of the report with the court, the plaintiff shall pay the balance of the director's verified costs or be refunded any unused estimated costs advanced to the director. In the event that the claimant shall contest the director's costs, the court shall then determine the reasonable costs to be paid by the claimant; and

(f) The director shall file the report with the court upon completion and shall send a copy thereof to all parties to the action. Objections to the report of the director and hearing upon the objections shall be in accordance with the provisions of section 42-1412, Idaho Code; and

(g) For those cases in which the director notifies the district court that the director does not intend to prepare a report, the cause may thereafter be brought on for hearing in open court, and any party having filed a timely objection with the court may appear and defend against the claim; provided that the court in such a case may, upon motion and good cause shown, order the director to prepare a report in accordance with subsections (3)(e) and (3)(f) hereof.

(4) The court's decree shall determine the rights of the plaintiff in accordance with the proof submitted but subject to the terms of the original decree or decrees. The decree shall contain or incorporate a statement of each

element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable, except that a decree for any adjudication commenced prior to July 1, 1986, need not contain a determination of the annual volume of consumptive use. The decree shall also determine all other matters necessary for the efficient administration of the water rights. Whereupon water shall be distributed to the claimant in accordance therewith and in the same manner as though the claimant's right had been included in the decree or decrees.

(5) Any party to said action may appeal in accordance with the Idaho appellate rules from the decree entered in the action hereby authorized to be brought. [1911, ch. 224, § 1, p. 708; am. 1915, ch. 34, § 18, p. 112; reen. C.L., § 4623a; C.S., § 7036; I.C.A., § 41-1305; am. 1981, ch. 265, § 3, p. 561; am. 1986, ch. 220, § 6, p. 558; am. 1986, ch. 230, § 1, p. 621.]

42-1405a. Construction of §§ 42-1404 and 42-1406. – The provisions of subsection (2) of section 42-1404, Idaho Code, and subsections (1) and (2) of section 42-1406, Idaho Code, shall not be used to commence the general adjudication authorized by section 42-1406A, Idaho Code. [1986, ch. 220, § 29, p. 558.]

42-1406. General adjudication – Public interest. – (1) Upon petition signed by five (5) or more or a majority of the users of water from any water system requesting a determination of the rights of the various claimants of water from that system, if the director deems that the public interest and necessity will be served by a determination of the water rights of that water system, the director shall petition the court for an order commencing

a general adjudication of the rights of the claimants from the water system, in accordance with sections 42-1407 and 42-1408, Idaho Code.

(2) If the director deems that the public interest and necessity will be served by a determination of the water rights of any water system, the director, upon his own initiative, may file a petition for entry of an order commencing a general adjudication. [I.C., § 42-1406, as added by 1969, ch. 279, § 4, p. 822; am. 1986, ch. 220, § 7, p. 558.]

42-1406A. Snake River basin adjudication – Commencement. – (1) Effective management in the public interest of the waters of the Snake River basin requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water from that system be determined. Therefore, the director of the department of water resources shall petition the district court to commence an adjudication within the terms of the McCarran amendment, 43 U.S.C. section 666, of the water rights of the Snake River basin either through initiation of a new proceeding or the enlargement of an ongoing adjudication proceeding. The petition shall describe:

(a) The boundaries of the system within the state to be adjudicated;

(b) Any class of water users within the system and the boundaries of any hydrologic sub-basins within the system for which the director intends to proceed separately with respect to the actions required or authorized to be taken pursuant to sections 42-1408 through 42-1414, Idaho Code; and

(c) The uses of water, if any, within the system that are recommended to be excluded from the adjudication proceeding.

(2) Upon issuance of an order by the district court which:

(a) Authorizes the director to commence an investigation and determination of the various water rights to be adjudicated within the system;

(b) Defines the boundaries of the system within the state to be adjudicated;

(c) Defines the classes of water users within the system and the boundaries of any hydrologic sub-basins within the system for which proceedings may advance separately pursuant to sections 42-1408 through 42-1414, Idaho Code; and

(d) Defines any uses of water excluded from the adjudication proceedings; the adjudication shall proceed in the manner provided under the provisions of chapter 14, title 42, Idaho Code, with the exception of sections 42-1406 and 42-1407, Idaho Code.

(3) In exercising his authority under subsection (1) of this section, the director of the department of water resources:

(a) Shall petition the district court to commence an adjudication of the water rights of all of the Snake River basin within the state of Idaho upstream from the point at which the Snake River leaves the state of Idaho and enters the state of Oregon in section 14, township 4 north, range 6 west, Boise Meridian;

(b) May petition the district court to commence an adjudication of the water rights of the main stem of the Snake River which forms the boundary between the state of Idaho and the states of Oregon and Washington. The director may include within his petition under this paragraph any unadjudicated tributaries. The director shall not include in the petition filed under this paragraph any adjudicated tributary unless the United States, or other parties whose consent is necessary, refuse to consent to the jurisdiction of the district court to adjudicate all

federal or Indian water rights claims pursuant to the McCarran amendment, 43 U.S.C. section 666. [I.C., § 42-1406A, as added by 1985, ch. 18, § 1, p. 27; am. 1985, ch. 118, § 1, p. 286.]

42-1407. General adjudication – Contents of petition. – (1) A petition for a general adjudication shall contain among other things, the following:

(a) a description of the proposed boundaries of the water system to be adjudicated;

(b) a statement of why the public interest and necessity would be served by a general adjudication;

(c) a list of counties where the water system proposed to be adjudicated is located and a designation of whether all or only a portion of the county is included within the boundaries of the proposed general adjudication;

(d) a description of the general method proposed to ascertain and to serve claimants not disclosed following completion of the service required by paragraphs (a) through (d) of subsection (2) of section 42-1408A, Idaho Code; and

(e) a prayer for relief requesting the district court to enter an order that commences the general adjudication.

(2) A petition for entry of an order commencing a general adjudication shall be captioned: "In Re the General Adjudication of Rights to the Use of Water From the ___ Water System.". [I.C., § 42-1407, as added by 1986, ch. 220, § 8, p. 558.]

42-1408. General adjudication – Venue – Notice of filing – Commencement order. – (1) A general adjudication shall be brought in any district court in which any part of the water system within the state of Idaho is located. The clerk of the district court in which the petition is filed shall send to the supreme court a true and certified copy of the petition. The supreme court, by order, shall assign the judge to preside over the general

adjudication. Venue of the general adjudication shall be determined by order or rule of the supreme court and venue of hearings under the general adjudication shall be determined by order of the presiding judge.

(2) The director shall prepare, in plain and concise language, and publish a notice of filing of a petition for entry of an order commencing a general adjudication for three (3) consecutive weeks in a newspaper of general circulation published in each county in which any part of the water system proposed to be adjudicated is located. If there is no newspaper published within a county, then the notice shall be published in a newspaper having general circulation in that county. The date set for hearing on the petition shall not be less than twenty (20) days after the last date of publication. The director shall serve the notice of filing a petition on the United States and on the state of Idaho. The director shall file affidavit(s) of service of the notice of filing with the district court upon completion of service.

(3) The notice of filing shall contain:

(a) a description of the boundaries of the water system proposed for the general adjudication;

(b) a statement of the date, place, and time of hearing before the district court;

(c) a concise statement of the matters proposed to be considered before the district court; and

(d) a statement that the district court will hear evidence and legal argument from any person in response to any matter raised by the petition.

(4) With respect to a general adjudication commenced pursuant to section 42-1406, Idaho Code, if the district court determines that the public interest and necessity will be served by a general adjudication, the district court shall enter an order that includes the following:

(a) a provision that commences the general adjudication;

(b) a description of the boundaries of the water system for which a general adjudication is commenced;

(c) a list of counties where the water system to be adjudicated is located and a designation of whether all or only a portion of the county is included within the boundaries of the general adjudication;

(d) a provision that requires all claimants to file a notice of claim or negotiated agreement for all water rights from the water system, except that the court may exclude those types of water rights designated in paragraph (a) of subsection (1) of section 42-1420, Idaho Code;

(e) a determination of the method of service for claimants not disclosed following completion of the service required by paragraphs (a) through (d) of subsection (2) of section 42-1408A, Idaho Code; and

(f) a statement that the files of the district court will contain affidavits of service and other documents stating the persons served with a copy of the notice of order commencing the general adjudication.

(5) Promptly upon entry of the commencement order, the clerk of the district court shall send a certified copy of the order to the director, and shall serve notice of entry of the order on all persons appearing before the court in accordance with the Idaho rules of civil procedure, except that the director may prepare and provide to the clerk, sufficient copies of a notice of entry of the order for service. [I.C., § 42-1408, as added by 1986, ch. 220, § 9, p. 558.]

42-1408A. Service of notice of order commencing a general adjudication. – (1) Upon entry of a district court's order commencing a general adjudication, the director shall prepare a notice of order, using plain and

concise language, that contains the following information or enclosures:

(a) an order commencing a general adjudication has been entered, the date of entry of the order, and the district court that entered the order;

(b) an illustration of the boundaries of the water system to be adjudicated;

(c) that section 42-1409, Idaho Code, requires in a general adjudication all claimants, except as specifically excluded by law, to file for each water right, a notice of claim on a form furnished by the director; failure to file a required notice of claim will result in a court determination that no water right exists for the use of water for which the required notice of claim was not filed;

(d) a notice of claim is required for any water right license and for any water right permit on file for which the director requires a permit holder to file a notice of claim in accordance with section 42-1409, Idaho Code; a notice of claim may be filed for any other water right permit;

(e) a notice of claim is not required for a water right evidenced by an application on file with the department;

(f) a notice of claim, if the court order excludes any uses from an adjudication, may be filed for the excluded use prior to the filing of the director's report with the district court and the right will be determined, even though a notice of claim is not required;

(g) a notice of claim is not required for any person who receives water solely by virtue of ownership of shares of stock in, or by being located within the boundaries of, a water delivery organization, if the water delivery organization holds legal title to the water right and if the water delivery organization files a notice of claim;

(h) the date set by the director for filing a timely notice of claim, which shall not be less than ninety (90) days after service;

(i) the locations at which the notice of claim forms will be available and at which a reasonably detailed map of the boundaries of the water system will be posted;

(j) section 42-1414, Idaho Code, requires each claimant, other than those exempted by federal law, to pay a variable fee with a notice of claim; failure to pay the fee will result in rejection of the notice of claim; failure to file a timely notice of claim will result in the assessment of a late fee in the amount of fifty dollars ($50.00) or fifteen per cent (15%) of the original filing fee, whichever is greater;

(k) section 42-1409, Idaho Code, requires that all purchasers of a water right inquire of the director whether a notice of claim has been filed, and if not, to file a notice of claim, except as specifically excluded by law, and that all claimants and purchasers provide the director written notice of any change in ownership, along with some evidence of ownership or of any change in mailing address; and

(l) the files of the district court will contain affidavits of service or other documents stating the persons served with a copy of the notice of order.

(2) The director shall serve copies of the notice of order on the parties to the general adjudication as follows:

(a) the director shall serve the notice of order on the state of Idaho and the United States;

(b) the director shall serve the notice of order on claimants other than the persons in paragraph (a) of subsection (2) of this section, initially by publication once a week for three (3) consecutive weeks in a newspaper of general circulation published in each county in which any part of the water system, which is the subject of the general adjudication, is located. If there is no newspaper published within a county, then the copies shall be published in a newspaper having general circulation in that county;

(c) the director shall post the notice of order in each county courthouse, county recorder's office, and county assessor's office in which any part of the water system is located. The director shall complete the posting on or before the date of the last publication within each county;
(d) the director shall serve the notice of order by ordinary mail on each person listed as owning real property on the real property assessment roll within the boundaries of the water system to be adjudicated at the address listed on the real property assessment roll; and
(e) the director shall file a copy of the notice of order commencing a general adjudication in the office of the county recorder in each county in which any part of the water system is located; notwithstanding the provisions of section 5-505, Idaho Code, the notice, from the time it is filed with the recorder for record, is constructive notice of the contents thereof within the county in which the notice is recorded, to subsequent purchasers and mortgagees.

(3) The director shall send the notice of order by ordinary mail to all persons who submit a written request to the director to be notified of the commencement of an adjudication. The director may circulate copies in any additional manner the director deems appropriate.

(4) Upon expiration of the period for filing notices of claims, the director shall compare the notices of claims with department records and other information reasonably available to determine whether there are any rights to water from the water system for which no notice of claim was filed. In the event the director determines that not all claimants have filed claims, the director shall make a reasonably diligent effort in accordance with the court order to determine the land to which the possible claim is appurtenant, the last known owner of that land, and the last known address of that owner. The director

shall serve a notice of order on the last known owner in accordance with the court order. The notice shall contain the information specified in subsection (1) of this section, except that the notice shall state the additional period of time, in no case less than thirty (30) days from the date the notice is served, in which the notice of claim must be received by the director.

(5) The director shall file with the district court such proof of service as may be required to demonstrate compliance with the above requirements. [I.C., § 42-1408A, as added by 1986, ch. 220, § 10, p. 558 and 1986, ch. 230, § 2, p. 621; am. 1991, ch. 84, § 1; p. 188.]

42-1409. Notice of claim. – (1) The director shall prepare and furnish at no cost two (2) standard notice of claim forms. One (1) notice of claim form shall be for use by any claimant claiming a water right acquired under state law. The other notice of claim form shall be for use by any claimant claiming a water right reserved under federal law, unless the state of Idaho and the federal reserved water rights claimant have described the water right in a negotiated agreement and have submitted a copy of that agreement to the director.

(2) The notice of claim form for use by any claimant who claims a water right acquired under state law shall include the following:
(a) the name and address of the claimant;
(b) the source of water;
(c) the quantity of water claimed to be used in cubic feet per second or the quantity of water stored in acre-feet per year;
(d) the date of priority claimed from any license, permit, or decree; or if the right is not based upon a license,

permit, or decree, then the date when the water was first applied to beneficial use;

(e) the number thereof, if founded upon a right on file with the department; or if the right is founded upon judicial decree not on file with the department, then the title of the court and cause, number of the action and the date of entry;

(f) the legal description of the point of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;

(g) the purpose(s) of use and the period of the year when water is used for each purpose;

(h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code;

(i) the dates of any changes or enlargements in use, including the dimension of the diversion works as originally constructed and as enlarged;

(j) the annual volume of consumptive use; and

(k) such other facts as the director may require to show the extent and nature of the right and to show compliance with the law in acquiring the right claimed.

(3) The other notice of claim form shall be for use by any claimant who claims a water right reserved under federal law, unless the state of Idaho and the federal reserved water rights claimant have described the water right in a negotiated agreement and have submitted a copy of that agreement to the director. The notice of claim form shall include the following, as applicable:

(a) the name and address of the claimant;

(b) the source of water;

(c) the total quantity of water claimed to be reserved for each and every purpose, including all present and future uses;

(d) the date of priority claimed;

(e) the legal description of existing point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;

(f) the purpose(s) for which the water included in the claim is presently being used, if at all;

(g) the period of the year when water is necessary for the designated purposes;

(h) a legal description of the reservation;

(i) a map designating for each consumptive use the existing or proposed place of use;

(j) the annual volume of consumptive use;

(k) a list of document(s) creating the federal reservation; and

(l) such other facts as the court may required to define the right in accordance with federal law.

(4) A claimant may amend a notice of claim form at any time prior to the filing of the director's report required by section 42-1411, Idaho Code. With respect to any water right for which a change was approved by the director pursuant to sections 42-211 or 42-222, Idaho Code, after filing the notice of claim and prior to filing of the director's report, the claimant shall amend the notice of claim consistent with the determination of the director on the change. If a claimant increases in an amended notice of claim the amount of water claimed, the amount of land irrigated or the kilowatt capacity of the generating facility, the claimant shall pay upon filing the amended notice of claim an additional variable fee in accordance with the rates set forth in section 42-1414, Idaho Code. Claimants shall be entitled to return of filing fees or late fees only where the fee was miscalculated at

the time the original or amended notice of claim was filed.

(5) Each claimant shall sign and verify under oath that the statements contained in a notice of claim or amended notice of claim are true and correct.

(6) All claimants of water rights that are included in a general adjudication shall file with the director a notice of claim or negotiated agreement of federal reserved water rights for all water rights, except for those types of water rights designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code. Any claimant may file a notice of claim or negotiated agreement for any water right designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code, at any time before the director's report is filed with the district court. Any person who fails to submit a required notice of claim or negotiated agreement shall be deemed to have been constructively served with notice of a general adjudication by publication and mailing as required by section 42-1408A, Idaho Code.

(7) Each purchaser of a water right from the water system shall inquire of the director whether a notice of claim has been filed, and if not, shall file a notice of claim in accordance with this section. All claimants and purchasers shall provide the director written notice of any change in ownership or of any change in mailing address during the pendency of a general adjudication. All purchasers shall submit some evidence of ownership along with the notice of change of ownership.

(8) If a claimant files a notice of claim after the date set by the director in the notice mailed or served in accordance with subsections (2), (3), or (4) of section

42-1408A, Idaho Code, or with subsection (9) of this section; the claimant shall pay the fee set forth in section 42-1414, Idaho Code, and in addition, the amount of fifty dollars ($50.00) or fifteen per cent (15%) of the original filing fee, whichever is greater. The district court or the director may waive the late processing fee or a portion thereof for good cause.

(9) At least one hundred twenty (120) days prior to filing of the director's report with the court, the director may notify each holder of a permit or license to appropriate water from the water system, for which proof of beneficial use was filed after entry of the court's order commencing a general adjudication, to file a notice of claim within ninety (90) days of mailing of the notice. The director shall notify the holder of the permit or license by certified mail at the most recent address shown in the records of the department.

(10) The district court or director may extend the time for filing a notice of claim. [I.C., § 42-1409, as added by 1986, ch. 220, § 11, p. 558.]

42-1410. Examination of water system and of claims. – (1) Upon entry of the court's order commencing a general adjudication, or as required in sections 42-1404 or 42-1405, Idaho Code, the director shall commence an examination of the water system, the canals and ditches and other works, and the uses being made of water diverted from the water system. The examination shall continue for such a period of time as is necessary to evaluate the extent and nature of each water right for which a notice of claim has been filed. The director may conduct any fact-finding hearing necessary for a full and adequate disclosure of the facts.

(2) The director and other employees of the department shall have authority to go upon all lands, both public and private, for the purpose of investigating the uses of water from any water source and may require the cooperation of the claimant in investigating the claimant's water use. The employee investigating the claimant's use shall make a reasonable effort to contact the claimant to schedule a date and approximate time for the examination. If the well or diversion works are located in a building other than an unlocked structure used solely for housing the well or other diversion works in which there is no reasonable expectation of privacy, the employee shall only enter the building in the absence of a court order after requesting and receiving the permission of the claimant or other occupant. The director may request the district court to issue an order compelling inspection and subpoenas requiring the attendance of any witness or the production of documents in accordance with the Idaho rules of civil procedure.

(3) The provisions of subsections (1) and (2) of this section shall not apply to federally recognized Indian reservations unless pursuant to court order or tribal consent.

(4) The director shall prepare a map or maps of the water system to be adjudicated in such detail as the director deems appropriate to assist the claimants in preparing notices of claims and objections to the director's report.

(5) Any maps prepared by the director pursuant to subsection (4) of this section shall be available for inspection at the offices of the department and any other locations the director may designate, for the purpose of

assisting any claimant in preparing and filing claims and objections to the director's report. [I.C. § 42-1410, as added by 1986, ch. 220, § 12, p. 558.]

42-1411. Report of the director. – (1) The director shall prepare a report on the water system. The report shall consist of three (3) parts. The first part of the report shall contain the director's determination of the rights to the use of water from the water system in accordance with the provisions of subsection (2) of this section and a description of the water system. The second part of the report shall contain an abstract of each notice of claim or negotiated agreement for all water rights reserved under federal law in accordance with the provisions of subsection (3) of this section. The third part of the report shall contain the notices of claim or negotiated agreements filed by any claimants of rights reserved under federal law.

(2) The director shall determine the following elements with respect to all water rights acquired under state law:

(a) the name and address of the claimant;

(b) the source of water;

(c) the quantity of water used in cubic feet per second or the quantity of water stored in acre-feet per year;

(d) the date of priority;

(e) the legal description of the point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;

(f) the purpose of use;

(g) the period of the year when water is used for such purposes;

(h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code;
(i) the annual volume of consumptive use; and
(j) such other matters as are necessary to define the right.

(3) The director shall abstract the notices of claim or negotiated agreements for all water rights reserved under federal law. The abstract shall summarize the notices of claim or negotiated agreement for all water rights reserved under federal law but shall not change in any substantive manner the claimed or negotiated water right. The abstract shall include the following elements, as applicable:
(a) the name and address of the claimant;
(b) the source of water;
(c) the total quantity of water claimed to be reserved for each and every purpose, including all present and future uses;
(d) the date of priority;
(e) the legal description of the existing point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;
(f) the period of the year when water is necessary for such purposes;
(g) the annual volume of consumptive use;
(h) a legal description of the reservation;
(i) such other matters as the court may require to define the right in accordance with federal law.

(4) The director shall file an original of the report with the district court. The director shall distribute for display and review by parties, at least one (1) copy of parts I and II of the report to each county wherein a

portion of the water system is located. The director shall also serve on each claimant or the claimant's attorney at the last known post office address a notice of filing of the director's report. The notice shall be prepared by the director using plain and concise language and shall include:
(a) a statement that the director's report of the various rights to be adjudicated within the water system has been filed with the district court, naming the district court with which the report was filed;
(b) a copy of that portion of the report setting forth the claimant's water right;
(c) a statement that a complete copy of parts I and II of the report is available for inspection, listing the locations at which the report is available, which shall include the office of the clerk of the district court for each county in which any part of the stream system is located, the offices of the department, and any other locations the director may designate;
(d) a statement that all or a portion of the report is available upon request at the offices of the department, subject to payment of a reasonable fee to cover costs of reproduction and mailing;
(e) a statement that any party may file objections to any portion of the report with the district court specified in the notice and must mail a copy of the objection to the director, and to the claimant of each claimed or negotiated right objected to, if the objector is not also the claimant of the right for which the objection is filed;
(f) the date prior to which all objections must be filed, which shall not be less than sixty (60) days for any director's report containing five hundred (500) claims or less, one hundred twenty (120) days for any director's report containing more than five hundred (500) claims and not more than five thousand (5,000) claims, and one hundred eighty (180) days for any director's report

containing more than five thousand (5,000) claims; the above-stated periods of time shall commence on the date of service by mail of the notice of filing;

(g) a statement that the director shall file responses to objections to the first part of the report, that the director shall mail copies of the response to the objector and the claimant of the right objected to, that the claimant of the right objected to may file a response to an objection and that the claimant in such event shall mail a copy of any response to the objector and to the director;

(h) a statement that claimants of claims or negotiated rights listed in the second part of the report may file responses to objections filed against their claims or negotiated rights, and that a copy of any response must be mailed to the director, and to the objector, if the objector is not the director;

(i) the date prior to which all responses to objections must be filed with the court, which shall not be less than one hundred twenty (12) [120] days following receipt of a copy of the objection; and

(j) a statement that any part of the report to which no objections are filed shall be decreed by the district court and the time and location set for the hearing at which the unobjected parts of the report will be decreed, which time shall not be less than sixty (60) days following the expiration of the period for filing responses to objections.

(5) The director shall file an affidavit with the district court demonstrating compliance with the notice requirements of subsection (4) of this section. [I.C., § 42-1411, as added by 1986, ch. 220, § 13, p. 558.]

42-1412. Objections – Responses to objections – Hearing before district judge – Entry of final decree. – (1) Any party who desires to object to parts I or II of the director's report shall file the party's objections with the district court within the time specified in the notice of

filing of the report. The party shall also send a copy of the objection to the claimant whose water right claim or negotiated right is the subject of the objection and to the director.

(2) The director shall file with the district court a response to any objection to part I of the report within the time specified in the notice of filing of the report. The director shall attach to each response the original of the notice of claim. The director shall mail a copy of the response to the objector and the claimant whose right is the subject of the objection. A claimant may file with the district court a response to any objection filed with respect to the claimant's water right within the time specified in the notice of filing of the report. The claimant shall mail a copy of any response to the objector and to the director.

(3) Any claimant of a water right reserved under federal law may file with the district court a response to any objection filed with respect to the claimant's water right described in part II of the report within the time specified in the notice of filing of the report. The claimant shall mail a copy of any response to the objector and to the director.

(4) The report of the director, objections, responses to objections, notices of claims and any negotiated agreement between the state of Idaho and any federal reserved water right claimant shall constitute the pleadings. The district court may allow such further or amended pleadings as may be necessary for a final determination of the proceedings.

(5) Following expiration of the period for filing objections and responses thereto, the district court may

convene pretrial conferences on an objection or any group of objections. Following consultation with the parties, the district court may enter a pretrial order. The pretrial order may establish the following:

(a) the date when all pretrial motions shall be filed;
(b) the date when all discovery shall be completed; and
(c) the date for the trial on the objection(s).

(6) The district court shall provide the director, each party who objected, and each claimant whose claimed or negotiated right is the subject of the objection, written notice of the pretrial conference at least thirty (30) days prior to the date set for the pretrial conference.

(7) The district court or special master shall conduct the trial without a jury on an objection or any group of objections in accordance with the Idaho rules of civil procedure.

(8) The district court shall enter a partial decree determining the nature and extent of the water right which is the subject of the objection or other matters which are the subject of the objection. The decree shall contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable, except that a decree for any adjudication commenced prior to July 1, 1986, need not contain a determination of the annual volume of consumptive use for any water right. The decree shall also determine all other matters necessary for the efficient administration of the water rights. Upon entry of the decree, the clerk of the district court shall send a certified copy of the decree to the director in accordance with section 42-1403, Idaho Code. The clerk of the district court shall notify the objector and claimant of each right

as to which an objection was determined by the district court of entry of the decree in the manner provided in the Idaho rules of civil procedure, except that the director may prepare and provide to the clerk sufficient copies for service of a notice of entry of the decree.

(9) Not less than sixty (60) days after the expiration of the period for filing responses to objections, the director shall file with the district court a statement of those portions of parts I and II of the director's report for which no objection was filed. The portions of the director's report for which no objection was filed shall be admitted as true facts. Following hearing, the district court shall enter a partial decree as to those portions of parts I and II of the report, including all matters necessary for the efficient administration of the water rights, for which no objection has been filed. The decree shall contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable, except that a decree for any adjudication commenced prior to July 1, 1986, need not contain a determination of the annual volume of consumptive use. Upon entry of the decree, the clerk of the district court shall send a certified copy of the decree to the director in accordance with section 42-1403, Idaho Code. The clerk of the district court shall notify each claimant of entry of the decree in the manner provided in the Idaho rules of civil procedure, except that the director may prepare and provide to the clerk, sufficient copies for service of a notice of entry of the decree.

(10) Upon resolution of all objections and entry of partial decree(s) pursuant to subsection (8) of this section

and entry of a partial decree for unobjected claims pursuant to subsection (9) of this section, the director shall combine all partial decrees into a final decree and submit the final decree to the district court for approval.

(11) The district court may extend or shorten the time for filing any objection to the director's report or any response to an objection. [I.C. § 42-1412, as added by 1986, ch. 220, § 14, p. 558; am. 1987, ch. 158, § 1, p. 308.]

42-1413. Filing of final decree. – (1) When a decree has become final in an adjudication in which the director filed a report, the director shall file a certified copy of the decree or a transcript thereof in the office of the county recorder of each county in which the place of use or point of diversion of the water rights contained in the decree is located.

(2) When a decree has become final in an adjudication in which the director has not filed a report, the clerk of the district court in which the decree is entered shall file a certified copy of the decree or a transcript thereof in the office of the county recorder for each county in which the place of use or point of diversion of the water rights decreed is located, and shall send a certified copy of the decree to the director as required in section 42-1403, Idaho Code.

(3) The transcript of decree shall contain the following:

(a) title of the district court;
(b) name of the case;
(c) the case number;
(d) names of each party;
(e) date of entry;

(f) the description of the boundaries of the water system, which is the subject of the general adjudication;
(g) a statement that the decree is entered in the records of the clerk of the district court;
(h) a statement that information as to the rights decreed is available at the offices of the department; and
(i) such other information as may be necessary to assist any person searching the title of a parcel to find the decree.

(4) A decree or transcript recorded pursuant to this section from the time it is filed with the recorder for record, is constructive notice of the contents of the decree within the county in which the decree or transcript is recorded to subsequent purchasers and mortgagees. [I.C., § 42-1413, as added by 1986, ch. 220, § 15, p. 558.]

42-1414. Fees for filing notice of claims. – In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights the department of water resources shall accept no notice of claim required under the provisions of section 42-1409, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the fee schedule set forth below. Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the department to reject and return the notice of claim to the claimant. The fee schedule set forth below applies to adjudication proceedings commenced or enlarged on or after January 1, 1985, and to adjudication proceedings for which a proposed finding of water rights has not been filed with the appropriate district court by the department of water resources prior to January 1, 1985.

(1) Flat fee per claim filed:
(a) Claims for domestic and/or stockwatering rights $25.00
(b) Claims for all other rights $50.00

(2) Additional variable water use fee for claims filed based upon acreage, power generating capacity, c.f.s., or equivalent volume of water:
(a) Irrigation use (one fee irrespective of number of claims):.....$1.00 per acre
(b) Power:....$3.50 per kilowatt of capacity (manufacturer's nameplate rating)
(c) Aquaculture:.....$10.00 per c.f.s.
(d) Municipal, industrial, commercial, mining, heating, cooling:.....$100.00 per c.f.s.
(e) Public instream flow, public lake level maintenance, wildlife:.....$100.00 per c.f.s.

(3) Payment of a variable water use fee of more than one thousand dollars ($1,000) may be spread out over as many as five (5) annual equal payments with ten percent (10%) interest accruing on the unpaid balance. All fees collected by the department pursuant to this section shall be placed in the water resources adjudication account established in section 42-1777, Idaho Code. [I.C. § 42-1414, as added by 1971, ch. 153, § 1, p. 753; am. 1972, ch. 23, § 1, p. 28; am. 1985, ch. 18, § 3, p. 27.]

42-1415. Enforcement of extended variable fee. – After filing of the director's report in a general adjudication, the director may prohibit the diversion and use of water in satisfaction of a right claimed or decreed in the adjudication upon the failure of the claimant to comply with the schedule for payment of variable fees as set forth in subsection (3) of section 42-1414, Idaho Code. [I.C., § 42-1415, as added by 1986, ch. 220, § 16, p. 558.]

42-1416. Presumptions in basin-wide adjudication. – In any basin-wide adjudication, the following shall apply:

(1) The holders of previously adjudicated water rights shall be presumed to have validly applied all water to beneficial use on the lands being irrigated at the time of basin-wide adjudication with no change in the priority dates of the original rights.

(2) Expansion of the use after acquisition of a valid unadjudicated water right in violation of the mandatory permit requirements shall be presumed to be valid and to have created a water right with a priority date as of the completion of the expansion, in the absence of injury to other appropriators.

(3) A prior decree adjudicating a tributary stream or subbasin within the basin shall be presumed correct, if:
(a) It is or can be made substantially correct as to current water rights; and
(b) Contains all the elements necessary to adequately describe the water rights included in the decree.

(4) The presumptions established in this section are rebuttable.

(5) The presumptions established in this section shall not apply in any area designated by the department as a critical groundwater area for expansion of use that occurred after the date of designation. [I.C., § 42-1416, as added by 1985, ch. 19, § 1, p. 31.]

42-1416A. Prior change in point of diversion, place of use, period of use, or nature of use of water right claimed in a general adjudication. – (1) If any person entitled to the use of water has made a change in point of diversion, place of use, period of use or nature of use of all or a part of the water, including a change as part of an

exchange as defined by section 42-105, Idaho Code, prior to entry of an order commencing a general adjudication pursuant to section 42-1408, Idaho Code, and the person entitled to the use of water has not complied with the requirements of sections 42-108 and 42-222, Idaho Code, regarding such changes, the following shall apply:

(a) the water right may be claimed in the general adjudication as changed and an application for change of the water right is not required to be filed pursuant to section 42-222, Idaho Code; and

(b) the water right may be determined by the director in the director's report pursuant to section 42-1411, Idaho Code, and decreed by the district court pursuant to section 42-1412, Idaho Code, as changed, if the change meets the substantive criteria of section 42-222, Idaho Code, for approval of such changes, provided that the change may be approved subject to conditions necessary to satisfy the substantive criteria of section 42-222, Idaho Code, for approval of such changes.

(2) To the extent that the provisions of this section and section 42-1416, Idaho Code, are both applicable to the same water right, the two sections shall be applied conjunctively, if possible, but this section shall not be construed to limit the provisions of section 42-1416, Idaho Code. [I.C., § 42-1416A, as added by 1989, ch. 97, § 1, p. 226.]

42-1416B. Claim for expanded use in critical ground water area – Determination of water availability. – (1) Within any critical ground water area designated pursuant to section 42-233a, Idaho Code, a claim to the expanded use of a ground water right, which use was

expanded in violation of the mandatory permit requirements, may be decreed in a general water rights adjudication if the expansion occurred after the designation of the critical ground water area, before the commencement of the adjudication, and before the date of enactment of this section. The priority date for the right decreed shall be June 30, 1985.

(2) Water shall be deemed unavailable to fill the rights for expanded use, even if decreed in the adjudication, unless the director finds that a management program exists which will, within a time period acceptable to the director, limit the average annual water withdrawals from the aquifer designated in the critical ground water area to no more than the average annual recharge to the aquifer.

(3) Within two (2) years after a decree determining the water rights within a critical ground water area becomes final, but not sooner than four (4) years from the date of enactment of this section, the director of the department of water resources shall make a finding as to whether an adequate management program exists to bring withdrawals into balance with recharge.

(4) If the director finds that an adequate management program to bring withdrawals into balance with recharge does not exist, the director shall order all holders of rights to expanded use of ground water within the area to cease or reduce withdrawal of water until such time as the director determines that withdrawals have been brought into balance with recharge and sufficient ground water is available to resume or increase withdrawals. The director's order shall be issued before

September 1 and shall be effective beginning with the following growing season.

(5) For purposes of this section, the following definitions shall apply:

(a) "Expanded use" means an increase in the number of acres irrigated, or other additional use, under a valid ground water right without any increase in the rate of diversion or volume of water diverted.

(b) "Management program" means a program to recharge the aquifer, limit withdrawals from the aquifer or provide surface water supplies for all, or a portion, of the land irrigated with water withdrawn from the aquifer, including any actions designed to bring withdrawals into balance with the average annual recharge to the aquifer.

(c) "Recharge" refers to all processes, natural or artificial, which add water to the aquifer.

(d) "Withdrawal" refers to all processes, natural or artificial, which take water from the acquifer.

(6) The hearing and judicial review provisions of section 42-1701A, Idaho Code, shall apply to any findings and orders issued by the director pursuant to this section.

(7) Nothing contained in this section shall be construed to limit the authority of the director of the department of water resources to administer and enforce any other ground water laws of the state. [I.C., § 42-1416B, as added by 1989, ch. 212, § 1, p. 521.]

42-1417. General adjudication – Interim administration of water rights. – (1) At any time after filing of the director's report, the district court may, by order, permit the formation of water districts and the delivery of water in all or part of the water system pursuant to chapter 6, title 42, Idaho Code. The district court may permit the delivery of water in a water district:

(a) in accordance with part I of the director's report or as modified by the court's order;

(b) in accordance with the notices of claims abstracted in part II of the director's report upon a preliminary determination that the claimants of the rights to be administered are reasonably likely to prevail on the merits of their claims, or if not, then as modified by the court's order; or

(c) in accordance with negotiated agreements abstracted in part II of the director's report or as modified by the court's order; and

(d) in accordance with applicable partial decree(s).

(2) The district court may enter the order only:

(a) upon a motion by the director or by a claimant of water from the water system;

(b) after notice by the moving party by mail to the director and each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order; and

(c) upon a determination by the court, after hearing, that the interim administration of water rights in accordance with the report, or as the report is modified by the court's order, and in accordance with any partial decree(s), is reasonably necessary to protect senior water rights.

(3) Immediately upon entry of the court's order of interim administration of water rights, the clerk of the district court shall mail a certified copy of the order to the director, and the director shall immediately give notice of the order to the watermaster of the water districts affected by the order.

(4) The provisions of this section shall not apply to the delivery of federal reserved water rights within a federally recognized Indian reservation. [I.C., § 42-1417,

as added by 1986, ch. 220, § 17, p. 558; am. 1987, ch. 158, § 2, p. 308.]

42-1418. Appeals. – An appeal may be taken to the supreme court from an order, partial decree, or decree of the district court in any adjudication proceeding as provided by rule or order of the supreme court. [I.C., § 42-1418, as added by 1986, ch. 230, § 3, p. 621.]

42-1419. Entry of an order commencing a general adjudication on a special docket – Constructive notice – Filing of certified copy of order in other counties. – (1) The clerk of the district court shall enter an order commencing a general adjudication on a special docket for water right adjudications in addition to any other district court record.

(2) From the time of docketing and not before, any order commencing a general adjudication is constructive notice of the contents thereof, within the county in which the order is docketed, to subsequent purchasers and mortgagees.

(3) The director shall file a true and certified copy of any order commencing a general adjudication with the district court for each county of this state where the water system to be adjudicated is located. The clerk of the district court shall file and docket the same as provided in subsection (1) of this section. From the time of such docketing and not before, the order so docketed is constructive notice of the contents thereof within the county in which the order is docketed to subsequent purchasers and mortgagees. [I.C., § 42-1419, as added by 1986, ch. 220, § 19, p. 558.]

42-1420. Binding effect of decree – Exceptions. – (1) The decree entered in a general adjudication commenced under the provisions of sections 42-1406 or 42-1406A, Idaho Code, shall be binding on all persons [parties] and conclusive as to the nature and extent of the water rights of all persons [parties], including all unknown parties, except that the following described water rights shall not be lost by failure to file a notice of claim or negotiated agreement:

(a) a water right for domestic use or stock watering use, specifically excluded from the general adjudication by court order;

(b) a water right application for permit filed under chapters 2 or 15, title 42, Idaho Code;

(c) a water right permit issued under chapters 2 or 15, title 42, Idaho Code, unless the director required the permit holder to file a notice of claim in accordance with subsection (9) of section 42-1409, Idaho Code; and

(d) a claim to a water right under federal law, if the priority of the right claimed is later than and junior to the date of entry of the order commencing the general adjudication.

(2) The exceptions from the conclusive effect of a decree in a general adjudication stated in subsection (1) above shall not apply to any water right for which a notice of claim or negotiated agreement is filed. [I.C., § 42-1420, as added by 1986, ch. 220, § 20, p. 558 and 1986, ch. 230, § 4, p. 621.]

42-1421. Procedures for adjudication of unperfected water rights initiated under state law – Director's jurisdiction. – (1) All persons claiming a water right based on an application or permit on the date of entry of the order commencing a general adjudication are not required to

file a notice of claim unless required in accordance with subsection (9) of section 42-1409, Idaho Code. If the director approves the application in whole or in part during the pendency of a general adjudication and prior to filing the director's report, the director shall notify the permit holder of the pendency of the general adjudication. A permit holder who is not required by the director to file a notice of claim in accordance with subsection (9) of section 42-1409, Idaho Code, may file a notice of claim at any time prior to filing the director's report.

(2) All persons claiming a water right based on a water right license existing on the date of entry of the order commencing a general adjudication shall file a notice of claim.

(3) The district court shall decree any claimed water right for which proof of beneficial use has not been filed, but shall state that the right is conditioned upon completion of the appropriation in accordance with the laws of the state governing the appropriation of water and that the decreed right shall be subject to the terms of the license to appropriate water that is ultimately issued.

(4) The director retains jurisdiction of all applications, permits and licenses under chapters 2 or 15, title 42, Idaho Code, to take action authorized by the conditions contained in any permit or license or by applicable law. [I.C., § 42-1421, as added by 1986, ch. 220, § 21, p. 558.]

42-1422. Special master – Appointment – Powers and duties – Compensation – Disqualification – Review of special master's report. – (1) The district court may appoint one or more special masters in any general adjudication, in accordance with the following procedures:

(a) upon the district court's own motion;
(b) upon agreement of the parties; or
(c) upon motion of any party.

(2) A special master(s) shall be appointed to determine the water right claims asserted in the general adjudication authorized in section 42-1406A, Idaho Code, upon request of a party.

(3) The district court shall specify the powers and duties of a special master in the order of reference. The compensation and disqualification of a special master shall be governed by order or rule of the supreme court.

(4) Objections to and hearing on the special master's report shall be governed by rule 53(e) of the Idaho rules of civil procedure. [I.C., § 42-1422, as added by 1986, ch. 230, § 5, p. 621.]

42-1423. Severability. – The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [I.C., § 42-1423, as added by 1986, ch. 220, § 23, p. 558.]